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STATE OF WISCONSIN COURT OF APPEALS DISTRICT 2

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

CITY OF MENASHA, WISCONSIN,

Plaintiff-Appellant,

Appeal No. 2016AP000702

v.

Circuit Court No. 2015CV000017

VILLAGE OF HARRISON, WISCONSIN,

Defendant-Respondent.

ON APPEAL FROM THE CIRCUIT COURT FOR
CALUMET COUNTY,
THE HONORABLE ANGELA W. SUTKIEWICZ

REPLY BRIEF OF PLAINTIFF-APPELLANT,
CITY OF MENASHA

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VILLAGE OF HARRISON, WISCONSIN,

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REPLY BRIEF OF PLAINTIFF-APPELLANT,
CITY OF MENASHA

**I. THE CITY OF MENASHA HAS LEGALLY
PROTECTABLE INTERESTS AFFECTED BY
THESE VILLAGE ANNEXATIONS**

In its brief, Defendant-Respondent, Village of Harrison, argues that the City of Menasha does not have a legally protectable interest in the controversy. The Village focuses on the fact that the legislature has not specifically extended standing to allow neighboring municipalities to challenge annexations. As the Village notes until the legislature came to the rescue and carved out the circumstances under which towns would have standing to challenge a city or village annexation, towns were found not to have standing under case rule analysis. The City of Menasha does not dispute that

there is no specific statutory provision giving cities or villages standing to contest another city or village's annexation. The City of Menasha argues that it has standing by application of the case law factors for determining standing.

a. The legislature has given both villages and cities the ability to annex territory. *See* §66.0217, Wis. Stats. The Village argues that the City of Menasha has no legally protectable interest sufficient to establish standing. To the contrary, the City of Menasha as a municipal entity has the ability to annex the same territory.

In this particular case, the City of Menasha has the ability under the same statute to annex the same territory. Sanitary districts do not have statutory authority to alter municipal boundaries. Towns do not have statutory authority to expand by annexing land. Only cities and villages have that ability.

As a municipal entity contiguous to the Town of Harrison parcels subject to this annexation challenge, the City of Menasha does have a personal stake in the outcome of this controversy. R-11, p. 7; A-Ap., A134. The annexations affect the City of Menasha's special interest in its future growth by precluding future annexation by the City of Menasha; the City of Menasha almost surrounds these parcels; the parcels cut off the City of Menasha and create a city

island which will make it permanently more difficult for the City of Menasha to serve properties; it will preclude Menasha from protecting itself from hazardous or undesirable land uses; the City of Menasha has already paid to improve infrastructure and parkland in the area; the City of Menasha is a Village landowner. R-9, p. 1-3; R-8, p.2; R-10, p. 1-3; A-Ap., A125-A127; A-Ap., A121-A124; A-Ap., A135-A137.

b. The Intermunicipal Agreement entered into pursuant to Chapter 66 of the Wisconsin Statutes gives the City of Menasha a personal stake in the outcome of this controversy. The City provided evidence that it has an interest in the very same land that the Village annexed pursuant to the Intermunicipal Agreement that it has entered into with the Town of Harrison pursuant to Chapter 66 of the Wisconsin Statutes. A-Ap., A111. Additionally, the City provided evidence that the Village acknowledged the City's growth area when it pursued its incorporation. R-12, EXHIBIT F, pages 3-11. Had the City's "growth area" been included in the petition for incorporation, the City had an ability to object to the incorporation under the terms of the Intermunicipal Agreement. A-Ap., A116. Paragraph 10.

The Intermunicipal Agreement, executed in 1999, set the boundaries between the two municipal entities. A-AP., A111, paragraph 2. “The Town and the City desire to enter into an agreement pursuant to s. 66.023 Wis. Stats. to formalize boundaries between the municipalities.” A-AP., A111, paragraph 1. The purpose of the Intermunicipal Agreement is to: Establish fixed boundaries; Facilitate orderly development of the Town and the City; Eliminate current and minimize future litigation; Provide for cost effective governmental services to citizens of the Town and City; Maximize capacity of current infrastructure for sewer and water service; Promote harmony between the municipalities. A-AP., A111, paragraph 1. The parties are still under an obligation to pursue a permanent cooperative boundary plan pursuant to Wisconsin Statute s.66.023 (renumbered s. 66.0307). According to paragraph 16.a. of the Intermunicipal Agreement, “The agreement shall be binding upon future Town Boards and City Councils and shall remain in effect until the enactment of a s.66.023 Wis. Stats. agreement...It is the intent of the parties that no statutory amendments, changes in the forms of government of the Town or the City nor changes in the elected officials shall affect the enforceability of the agreement.” Section 66.023, Wis. Stats., renumbered s. 66.0307, is a statutory process to permanently change

boundaries. The Intermunicipal Agreement gives the City of Menasha a legally protected interest. The City of Menasha and Town of Harrison entered into an Intermunicipal Agreement to “Establish fixed boundaries...” as allowed by Wisconsin Statutes. The Village of Harrison relied upon the Intermunicipal Agreement when it went before the Incorporation Review Board.

By the terms of the Intermunicipal Agreement, from its execution in 1999 until 2029, the City of Menasha has the ability to either annex the same territory or with the Town of Harrison pursue a cooperative boundary plan change establishing that territory permanently as City of Menasha. If the Village annexations are allowed to stand, they will permanently preclude the City of Menasha from pursuing a cooperative boundary plan change establishing that territory permanently as City of Menasha.

II. THE CITY OF MENASHA WILL SUFFER REAL DAMAGES

Contrary to the Village’s contention that damages alleged by the City are purely speculative, there is no doubt that if the annexations stand the City will suffer substantial damages. The Village of Harrison argues that the damages alleged by the City of Menasha are purely speculative because there is no guarantee that

the City ever would be able to annex all or any part of the remaining “growth area” designated in the Agreement. The damages are real if the village annexations are able to proceed because the area will never come into the City of Menasha. The annexed territory will be in the Village and the City of Menasha will lose such things as tax base and the ability to specially assess for the expenses that it has incurred in placing infrastructure.

The Village fails to recognize that under the terms of the Intermunicipal Agreement the parties agreed to permanent boundaries between each other expecting the “growth area” to come into the City of Menasha through a cooperative boundary plan process. The parties have time to complete the cooperative boundary plan procedures as the agreement runs to 2029.

CONCLUSION

The City of Menasha has demonstrated that it has standing to proceed in this action. Upon finding that the City of Menasha has standing, the matter should be remanded back to the circuit court for further proceedings. The Circuit Court did not address the claims on the merits as it dismissed the City’s action based on lack of standing. Respectfully submitted this 6th day of September, 2016.



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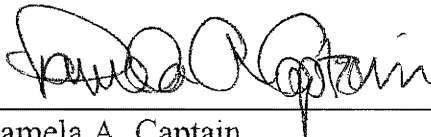
CERTIFICATION REGARDING ELECTRONIC BRIEF
PURSUANT TO
SECTION 809.19(12)(f), STATS.

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of section 809.19(12), Stats.

I further certify that this electronic brief is identical in content and format to the printed form of the brief as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Date: 9-6-2016



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FORM AND LENGTH CERTIFICATION

I hereby certify that this reply brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font.

The length of this brief is 7 pages and 1184 words.

Date: 9-6-2016

A handwritten signature in black ink, appearing to read "Pamela A. Captain", written over a horizontal line.

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